

EXHIBIT A

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Attorneys for Plaintiffs
Atlantic Wave Holdings, LLC
Secure Community, LLC
Strikepoint Consulting, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL JUSTICE CENTER

ATLANTIC WAVE HOLDINGS, LLC, a
Virginia limited liability company, SECURE
COMMUNITY, LLC, a Virginia limited
liability company, and STRIKEPOINT
CONSULTING, LLC, a Virginia limited
liability company;

Plaintiffs,

vs.

CYBERLUX CORPORATION, a Nevada
corporation; MARK D. SCHMIDT, an
individual; and DOES 1 to 50, Inclusive;

Defendants.

CASE NO. 37-2023-00055306-CU-MC-CTL

COMPLAINT

1. Judicial Foreclosure
2. Injunctive Relief
3. Appointment of Receiver

Plaintiff Atlantic Wave Holdings, LLC (“AWH”), Secure Community, LLC (“SC”), and
Strikepoint Consulting, LLC (“SPC”) (collectively “Plaintiffs”) complain and allege as follows:

GENERAL ALLEGATIONS

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2 1. This honorable Court is the appropriate venue for the instant action because the
3 secured assets to be foreclosed on which are the subject of this action are physically situated in
4 San Diego County, California.

5 2. At all times herein mentioned, Plaintiff AWH, has been a Virginia limited liability
6 company, and at all times herein is permitted to conduct business in the State of California.

7 3. Plaintiffs are informed and believes and thereupon alleges that defendant
8 Cyberlux Corporation (“Cyberlux”), was and is a corporation, formed under the laws of the State
9 Nevada and permitted to conduct business in the State of California.

10 4. Plaintiffs are informed and believe and thereupon allege that defendant
11 Strikepoint, LLC, a Virginia limited liability company, is permitted to conduct business in the
12 State of California.

13 5. Plaintiffs are informed and believe and based thereon allege that Defendant
14 Cyberlux Corporation is a corporation owning physical assets and subsidiary businesses situated
15 in the State of California and County of San Diego.

16 6. Plaintiff is informed and believes and thereupon alleges that defendant Mark D. Schmidt,
17 president of defendant Cyberlux Corporation, is an individual residing in North Carolina.
18 (Hereinafter, Cyberlux, and Mark D. Schmidt shall collectively be referred to as “Defendants.”)
19 Defendant Schmidt is a named party to the settlement agreement, final judgment, UCC financing
20 statement, and acknowledgment of the lien described more fully herein.

21 7. Plaintiff is informed and believes and thereupon alleges that the property to be foreclosed
22 on, including but not limited to Datron World Communication, Inc., a corporation formed under
23 the laws of the State of California and a subsidiary of Cyberlux, is located within the judicial
24 boundaries of this Court. Datron World Communications is located at 995 Joshua Way Suite A,
25 Vista, CA 92081.

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1 8. On June 15, 2023, Plaintiffs and Defendants executed a settlement agreement
2 (hereinafter the "Settlement Agreement") which acted as a security agreement between the parties
3 by creating a secured interest in various Cyberlux assets situated in the State of California, County
4 of San Diego.

5 9. On June 28, 2023, a Final Order and Judgement (hereafter "Final Judgement") in the
6 underlying action was entered by a judge in the Commonwealth of Virginia memorializing the
7 Settlement Agreement into a formal judgment. The Final Judgment expressly provides for
8 Plaintiffs' secured interest in Cyberlux assets held in the County of San Diego. Pursuant to Article
9 IV, Section 1 of the United States Constitution, judgments from one state are generally recognized
10 and enforceable in other states under the Full Faith and Credit Clause.

11 10. On October 20, 2023, Plaintiffs filed a Uniform Commercial Code Financing Statement
12 ("UCC Financing Statement") with the California Secretary of State as agreed to in the parties'
13 Settlement Agreement and further ordered in the Final Judgment. The UCC Financing Statement
14 identifies, with specificity, the assets of Defendants subject to a secured interest by Plaintiffs
15 specifically categorizing collateral for debts owed to Plaintiffs and set forth in both the Settlement
16 Agreement and Final Judgement in the event Defendants defaulted on their obligations.

17 11. On October 20, 2023, Defendants filed a Lien Acknowledgment with the California
18 Secretary of State acknowledging the specific secured assets created by the Settlement Agreement,
19 Final Judgement, and UCC Financing Statement.

20 12. The Settlement Agreement, Final Judgement, UCC Financing Statement, and
21 Acknowledgment of Lien each individually and also collectively entitle Plaintiffs to secured
22 interest in Defendants' property located in California and more specifically in San Diego County,
23 which is within the judicial boundaries of the above-entitled Court. The Settlement Agreement,
24 Final Judgement, UCC Financing Statement, and Acknowledgment of Lien each provide that both
25 Defendants, individually and also jointly and severally, agreed to submit to the jurisdiction of the
26 courts in San Diego County in the event additional action was needed. The above Court is the
27 proper Court for the trial of this action.

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1 17. On June 15, 2023, Plaintiffs and Defendants negotiated a settlement of the Underlying
 2 Lawsuit, memorialized by the parties in the Settlement Agreement, which was intended to
 3 concurrently serve as a security agreement, and was ultimately entered as *consented and agreed*
 4 in the Amended Final Order and Judgement in the Underlying Lawsuit. Plaintiff will be moving
 5 this Court to file a true and correct copy of the Settlement Agreement **under seal** and attached
 6 hereto as **Exhibit “B”**, and incorporated by this reference, as though set forth in full.

7 18. In connection with the Settlement Agreement, on June 28, 2023, the Court in the
 8 Underlying Lawsuit entered an Amended Final Order and Judgment (“Final Judgment”) in favor
 9 of the Plaintiffs for the principal sum of One Million Five Hundred Seventy-Two Thousand and
 10 Five Hundred Dollars (\$1,572,500), attorney’s fees incurred in the Underlying Lawsuit as set forth
 11 in the Settlement Agreement, sanctions in the amount of Ten Thousand Seven Hundred Thirty-
 12 Seven and Fifty cents (\$10,737.50), post-judgment interest of 12% per annum, and *security interest*
 13 *and lien interest* in all property held by Defendants if all sums are not paid. A true and correct
 14 copy of the Final Judgement is attached hereto as **Exhibit “C”**, and incorporated by this reference,
 15 as though set forth in full.

16 19. The Settlement Agreement as memorialized in pertinent part by the Final Judgement,
 17 provides that Defendants agree to pay the principal sum of \$1,572,500. Under the terms of the
 18 Settlement Agreement in paragraph 4(a) Defendants agreed to specific payment terms.

19 20. The Settlement Agreement, which was always intended by the Parties to function as a
 20 security agreement, included terms in paragraph 7 - Security Interest and Lien Interest - wherein
 21 Defendants agree and grant to Plaintiffs a “*full security interest and lien interest*” Defendants
 22 assets, specifically outlining the types of assets to be secured (“Collateral”) in the event Defendants
 23 breached their Obligation to pay as set forth by the Final Judgement. Plaintiffs duly perfected their
 24 security interest in the Collateral by filing a UCC Financing Statement with the California
 25 Secretary of State. A true and correct copy of the UCC Financing Statement is attached hereto as
 26 **Exhibit “D”** and incorporated herein by this reference, as though set forth in full.

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1 21. On October 20, 2023, Defendants filed an Acknowledgment of Lien with the California
2 Secretary of State, acknowledging the Plaintiffs' secured lien on various assets of Defendant
3 Cyberlux. A true and correct copy of the Acknowledgment of Lien is attached hereto as **Exhibit**
4 **"E"** and incorporated herein by this reference, as though set forth in full.

5 22. Hereinafter, Defendants' obligations to Plaintiffs under the Settlement Agreement and
6 Final Judgement shall sometimes be referred to collectively as the "Obligations."

7 23. Paragraph 21 of the Settlement Agreement outlines, among other things, Plaintiffs'
8 remedies for Defendants' breach and default on the Final Judgment. ("Default Terms").

9 24. Plaintiffs contend that Defendants are in breach of the Settlement Agreement,
10 paragraphs 4(b), 4(c), 8, 10 and ultimately have Defaulted on the Final Judgement.

11 25. On or about July 1, 2023, payments were made by Defendants to Plaintiff AWH and
12 SC in the amount of \$16,102.25; and to Plaintiff Strikepoint in the amount of \$4,513.89.

13 26. On August 1, 2023, Defendants failed to pay the owed and ordered installment payment
14 to each of the Plaintiffs.

15 27. Shortly after the missed installment, Plaintiffs contacted Defendants, requesting the
16 status of payment, to which they did not receive a response. At this time, Defendants were in
17 breach of the Settlement Agreement and in Default of the Final Judgement.

18 28. In or about September 2023, Defendants made a miraculous late payment of \$575,000
19 to Plaintiffs AWH and SC; and a payment of \$50,000 to Plaintiff Strikepoint. This was merely a
20 lump sum drone sale made by Defendants which they attempted to characterize as "pre-payment"
21 after they were already in Default. Plaintiffs made it clear that they were already in arrears on
22 payment and this did not change the fact that Defendants were in Default.

23 29. On October 1, 2023, Defendants, again, failed to make their monthly installment
24 payment to Plaintiffs, bringing Defendants into Default.

25 30. Plaintiffs reached out to Defendants on multiple occasions over the course of the
26 months to inquire into the status of payment and requested information but received no response.
27 Again, Defendants were in Default.

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1 31. On November 1, 2023, Defendants missed another, consecutive installment payment
2 owed to Plaintiffs.

3 32. On November 3, 2023, after Defendants were in Default for 2 months, Plaintiffs
4 exercised their rights under the Settlement Agreement and Final Judgement and requested
5 information and documentation under paragraph 8 of the Settlement Agreement. Defendants failed
6 or refused to provide such information.

7 33. On November 13, 2023, again after no monthly payments had been made and
8 Defendants' continued silence, Plaintiffs again requested further documentation and information
9 about specific financial documents in paragraph 8 of the Settlement Agreement. Defendants
10 provided no documentation to support such claim, despite being required to do so by the Settlement
11 Agreement. Plaintiffs have confirmed through multiple sources that substantial financial
12 information is being withheld, despite Defendants' representations to the contrary which can only
13 be construed as sheer avoidance of Defendants Obligations.

14 34. As of the filing of this Complaint, Defendants have refused to give even the slightest
15 bit of information relevant to financial information as is required under the Settlement Agreement.
16 Defendants are making a specious claim that all details are "classified".

17 35. Despite not providing Plaintiffs with any information on their financials, including
18 drone sales, and claiming all information relevant to the financials were "classified", Defendants
19 made numerous posts on X, formerly Twitter, stating that they had received approximately
20 \$78,000,000 for the sale of 2,000 Drones.

21 36. Despite owing Plaintiffs in excess of \$1,000,000 as well as the value for Plaintiff's
22 stock, Defendants acquired Datron World Communication, located in San Diego County, paying,
23 upon information and belief, a \$5,500,000 million down payment.

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1 37. Defendants' default and their ongoing failure and refusal to cure such default is in direct
 2 violation of the Final Judgment. It is also in breach of the Settlement Agreement terms which
 3 outline the various Defaults and contain specifics related to Plaintiffs' security interests in the
 4 Collateral. As such, Plaintiffs have no other option but to foreclose on the Collateral pursuant to
 5 the Settlement Agreement, the Final Judgment, and the UCC Financing Statement, all of which
 6 are personally agreed to by Defendants via the Acknowledgment of Lien, which was filed with the
 7 California Secretary of State.

8 38. In addition to repayment of debts and obligations owed in the Underlying Lawsuit, by
 9 the terms of the Settlement Agreement and Final Judgment, Defendants agreed to pay attorneys'
 10 fees and costs incurred by Plaintiffs in any action required for Plaintiffs to enforce the Settlement
 11 Agreement and Final Judgment and satisfy Defendants' debt. Plaintiffs have been required to
 12 retain legal counsel and incur other expenses. Indeed, Plaintiffs' counsel has attempted to settle
 13 this dispute and recoup the amount owed in the Final Judgment providing Defendants notice of
 14 the Default and requesting payment pursuant to the Final Judgment. This was unsuccessful.

15 39. Plaintiffs performed all the promises, covenants, and conditions it agreed to perform in
 16 accordance with the terms of the Settlement Agreement and Final Judgment, except for those
 17 promises, covenants, and conditions excused by the acts or omissions of said Defendants.

18 40. Pursuant to the Settlement Agreement and given the threatened decline of the secured
 19 assets, time is of the essence.

20 **FIRST CAUSE OF ACTION**

21 **(Judicial Foreclosure of Collateral Against All Defendants, and Does 1 through 50,** 22 **inclusive)**

23 41. Plaintiffs repeat and reallege the allegations contained above, and incorporates them
 24 herein by reference, as though set forth in full.

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1 42. By virtue of the provisions in the Settlement Agreement, Final Judgement, UCC
 2 Financial Statement, and Acknowledgement of Lien, Plaintiffs have continuing secured interests
 3 in the assets of Defendants, including but not limited to Datron World Communications, Inc.,
 4 which is formed under the laws of the State of California and has its principal place of business in
 5 the County of San Diego.

6 43. Plaintiffs desire that its security interest in Datron World Communications, Inc. be
 7 foreclosed; that the same be sold in a public sale by the appropriate agency in the manner provided
 8 by law; that the proceeds of the sale be applied to the payment of the debt and the costs of retaking
 9 and selling Datron World Communications, Inc., including Plaintiffs' attorney's fees and legal
 10 expenses; and that if the proceeds of the sale are insufficient to pay the amount due Plaintiff, then
 11 personal judgment for the deficiency be rendered against Defendants, and each of them, in an
 12 amount as may be permitted by law.

13 44. Based on Defendants' pattern of conduct which was outlined in the Default Judgment
 14 in the Underlying lawsuit, as well as conduct related to its mishandling of corporate funds and
 15 assets and established precedent of failing or refusing to pay debts owed to Plaintiffs, Plaintiffs
 16 request that the Court appoint a Receiver to oversee the foreclosure of the Collateral.

17 45. Nothing set forth herein is a waiver of Plaintiff's right to proceed with a non-judicial
 18 foreclosure sale of all or any portion of the Collateral.

19 46. By the provisions of the Settlement Agreement, which are memorialized in the Final
 20 Judgement, Defendants, and each of them, agreed to pay Plaintiffs reasonable attorney's fees and
 21 all other costs and expenses incurred by Plaintiff to collect the indebtedness. Due to the default of
 22 the Defendants, Plaintiff has been obligated to retain counsel to institute the instant litigation on
 23 its behalf and Plaintiff is therefore entitled to its attorney's fees and costs of suit according to proof
 24 at trial.

25 **SECOND CAUSE OF ACTION**

26 **(Injunction Against Defendants, and Does 1 through 50, inclusive)**

27 47. Plaintiff repeats and realleges the allegations contained above and incorporates them
 28 herein by reference, as though set forth in full.

1 48. In paragraph 21 of the Settlement Agreement, Defendants have agreed to injunctive
2 relief for the Plaintiff.

3 49. Plaintiff's repeated attempts to collect the amount due to which it is entitled by the
4 Final Judgement and applicable law have all been met with evasion and lack of cooperation;
5 Defendants' conduct demonstrates a high probability that they will jeopardize Plaintiffs' right to
6 the full value of the Collateral.

7 50. Upon information and belief, Plaintiff alleges that Defendants have placed or intend to
8 place the Collateral which is subject to the Settlement Agreement and memorialized in the Final
9 Judgement and UCC-Financial Statement beyond the effective reach of this Court by selling,
10 transferring, pledging, hypothecating, encumbering, or in other ways diminishing its security
11 value.

12 51. Upon information and belief, Plaintiff alleges that the Collateral which is subject to
13 Plaintiff's security interest is presently, or will shortly be, subject to conflicting security interests;
14 and, that Defendants are unable to meet their debts, and have become, or will shortly become,
15 insolvent.

16 52. Defendants' foregoing acts, unless and until enjoined and restrained by Order of this
17 Court, will cause great and irreparable injury to Plaintiff in that the security value of the Collateral
18 will be destroyed during the pendency of this action.

19 53. Plaintiff has no adequate remedy at law for the injuries, which it is currently suffering,
20 and which are threatened. Unless Defendants' conduct is restrained, it will be impossible to
21 ascertain the value of jeopardized Collateral, and Plaintiff will be required to institute multiple
22 lawsuits to protect its security interests in the Collateral.

23 54. By reason of the foregoing, including contractual agreements among the parties,
24 Plaintiffs' past and continuing injuries cannot be remedied with an award of money damages only,
25 and Plaintiffs are entitled to a temporary restraining order, a preliminary injunction, and a
26 permanent injunction restraining Defendants from committing the foregoing acts.

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1 61. Plaintiff is informed and believes and based thereon, alleges that the books, records,
2 ledgers, management, and control of the Collateral, and within the control of Defendants and their
3 agents who, as demonstrated above, have a history of mishandling company funds and assets.

4 62. Lastly, Defendant has admitted that the foreclosure of the Datron World
5 Communications, Inc. Collateral would require extensive sale process with the engagement of
6 financial advisors, marketing experts, and/or investment bankers, all with industry expertise, and
7 the implementation of a formal and fulsome sale process, so that the value of the Collateral is
8 maximized.

9 63. It is necessary and appropriate that a Receiver be appointed immediately to protect and
10 preserve Plaintiffs' rights in the Collateral. The Collateral is capable of generating substantial
11 value. However, Defendants have a history of mishandling money and assets. The receiver is
12 needed not only to oversee the sale of the Collateral but to make sure that Defendants are not
13 mishandling the Collateral.

14 64. There is no adequate remedy at law sufficient to protect Plaintiff's perfected security
15 interest in its Collateral unless a Receiver is appointed.

16 65. By reason of the foregoing, Plaintiffs are entitled to and respectfully request that this
17 Court proceed in accordance with California Code of Civil Procedure section 564, et seq., to
18 appoint a Receiver to do the following: (a) take possession of the Collateral and its operating
19 accounts, financial statements and records; (b) to care for the Collateral; (c) to oversee the sale of
20 the Collateral; (d) to collect funds from the sale of Collateral.

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1 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as follows:

2 1. For an order that the Collateral, specifically Datron World Communications, Inc., be
3 foreclosed on, sold, and the proceeds of the sale be applied towards satisfaction and payment of
4 the expenses of sale, the total outstanding sum due and owing to Plaintiff in the amount of
5 \$1,126,858.15, plus court-ordered interest, and Plaintiffs' attorneys fees and costs incurred herein;

6 2. For Defendants, and each of them, to be temporarily and permanently enjoined from
7 selling, transferring, pledging, hypothecating, encumbering, or in any other way impairing the
8 security value of Collateral, specifically Datron World Communications, Inc., described in the
9 UCC Financial Statement.

10 3. For judgment that the Collateral, specifically Datron World Communications, Inc. be
11 foreclosed upon, and for possession of the Collateral by Plaintiffs and/or sale or liquidation of the
12 Collateral, in accordance with the Commercial Code, with the proceeds of the sale to be applied
13 to the monies due and owing to Plaintiff; for a determination by the Court that Defendants are
14 liable for the sums secured by the Final Judgment, and for an Order that a deficiency judgment be
15 entered pursuant to the proceeding prescribed by law; and that Plaintiff or any other party to this
16 action may become a purchaser at the foreclosure sale by public or private sale;

17 4. This Court to enter its Order directing Defendants to provide any and all documents
18 relevant Defendant Cyberlux's Drone sales to Plaintiffs within ten (10) days of the Court's Order.

19 5. This Court to enter an Order directing Defendants to provide all documents related to
20 the acquisition of Datron World Communications, Inc. to Plaintiff within ten (10) days of the
21 Court's Order.

22 6. This Court to enter an Order directing Defendants to provide all current Cyberlux
23 Corporation financial statements to Plaintiffs.

24 7. That a Receiver be appointed to obtain possession, custody, and control over the
25 Collateral and be given the power to preserve the Collateral, specifically Datron World
26 Communications, Inc.

27 8. For attorney's fees pursuant to contract and Judgment;

28 9. For Plaintiffs costs of suit herein;

1 10. For such other and further relief as the Court may deem just and proper.

2
3 DATED: December 18, 2023

Ozols Law Firm

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6 By: 

7 Alexi Ozols
8 Attorney for Plaintiff

9 DATED: December 18, 2023

Heppenstall & Schultz

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11
12 By: 

13 Greta Schultz
14 Attorney for Plaintiff

EXHIBIT A

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

**ATLANTIC WAVE HOLDINGS, LLC,
& SECURE COMMUNITY, LLC,**
Plaintiffs,

v.

Case No. CL22-3882

**CYBERLUX CORPORATION,
& MARK D. SCHMIDT,**
Defendants.

ORDER

On January 26, 2023 came the Plaintiffs, by counsel, to be heard on the Plaintiff Atlantic Wave Holdings, LLC's ("AWH") Motion for Sanctions against Defendant Cyberlux Corp. ("Cyberlux") filed in this Court on January 9, 2023. Counsel for the Defendants were relieved by the Court pursuant to Rule of Professional Conduct 1.16(c)¹ prior to the arguments on the Plaintiff AWH's motion. The Plaintiff AWH Noticed the January 26 hearing on January 12, 2023.² The Court took the matter under advisement. Having reviewed the filings in this matter and heard the arguments of the Plaintiff AWH, the Court makes the findings and determinations outlined below.

BACKGROUND

The Plaintiffs filed a Complaint in this matter on August 24, 2022, alleging two claims of Breach of Contract, Contractual/Equitable Audit, and *Quantum Meruit*. On October 11, 2022, the Defendants filed responsive pleadings – an Answer and a Motion

¹ Motion to Withdraw as counsel having been filed with the Court on 12/27/22.

² While the Notice was properly served on counsel, who have since withdrawn, counsel for the Defendants represented, as officers of the Court, that they had provided the Defendants with the Notice of Hearing and underlying Motion for Sanctions.

Craving *Oyer*.³ The Plaintiff AWH filed their first Motion to Compel on November 21, 2022, alleging incomplete and untimely or overdue responses by the Defendant Cyberlux including a failure to provide any of the documents in the Request for Production served on August 29, 2022, with return of service filed on September 19, 2022.⁴ This Court heard the first Motion to Compel on December 13, 2022, and entered an Order Granting Plaintiff Atlantic Wave Holdings, LLC's Motion to Compel.⁵ The Order required the production of the documents requested in the Plaintiff AWH's First Requests for Production of Documents by January 3, 2023.⁶

On January 9, 2023, Plaintiff AWH brought a Motion for Sanctions against Defendant Cyberlux alleging that Cyberlux failed to produce any documents in response to the Order of this Court of December 20 compelling the production of documents and failed to pay the ordered attorney's fees and costs.⁷ Plaintiff AWH further alleged that depositions of a corporate officer of Defendant Cyberlux revealed that substantial relevant evidence is stored electronically and readily available for production.⁸

RELEVANT LAW

Rule 4:12(b)(2) of the Rules of the Supreme Court of Virginia governs appropriate responses by the Court to a party's failure to comply with an Order to Compel Discovery. It gives the Court numerous tools to appropriately address failure to obey an order of the Court compelling discovery. The Court may: 1) enter an order that matters or designated facts will

³ This Motion has not been set for hearing.

⁴ Motion to Compel, pg. 1.

⁵ Finding that Defendant Cyberlux failed to respond to AWH's First Requests for Production of Documents and ordering that Cyberlux comply within 21 days of the date of entry of the Order (12/13/22) and awarding Plaintiff AWH attorneys fees and costs in the amount of \$3,895.00 to be paid by Defendant Cyberlux.

⁶ The Court NOTES that January 3, 2023, did not fall on a legal holiday. Thus §1-210's extension of the computation of time does not apply.

⁷ The Court NOTES the Order of 12/13/22 is silent as to the due date of the fees and costs.

be taken as established for the purposes of the action, 2) enter an order refusing to allow the “disobedient party” to present argument or witnesses supporting a defense or opposing a claim, 3) enter an order “rendering a judgement by default against the disobedient party”, or 4) enter an order treating the failure to comply as contempt of court. In all motions brought under Rule 4:12(b), the Court is required to order the “party failing to obey the order” reasonable expenses unless the Court determines the failure to comply was substantially justified or such award is unjust.

The Court of Appeals of Virginia recently reviewed this issue in *Pine Hill Group, LLC v. Nass Group, LLC*, --- S.E.2d --- (January 10, 2023) Record No. 0626-22-4. Nass served interrogatories and requests for production on Pine Hill, who did not reply to either set of discovery.⁹ Counsel for Pine Hill filed a motion to withdraw when the responses to discover were forty days late.¹⁰ Naas moved to compel three weeks after the motion to withdraw was filed by counsel for Pine Hill.¹¹ The Circuit Court granted Naas’ Motion to Compel and ordered full and complete responses filed by October 25, 2021, and did not put any language in the Order notifying Pine Group of the potential penalty of default judgement.¹² By separate Order, but one the same date, the Court granted counsel’s motion to withdraw.¹³

Pine Hill again missed the deadline imposed by the Court and Nass moved for sanctions.¹⁴ The Court heard arguments on Naas’ sanction request on November 12, 2021.¹⁵

⁸ Motion for Sanctions (1/9/23), pg. 1 & 5. CFO David Downing Tr. At 79:1-18.

⁹ *Id.* at 1. Note - While the Defendant Cyberlux in the present action has failed to reply at all to the Requests for Production, the present case is distinguished as Defendant Cyberlux has provided some replies to the interrogatories served by Plaintiff AWH.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

As a result of Pine Hill's failure to provide any discovery responses to either the served Interrogatories or Requests for Production, the Court struck Pine Hill's answer to the complaint, entered default judgement against Pine Hill, and scheduled a hearing on damages.¹⁶

On February 25, 2022, Pine Hill moved for reconsideration of the Order for sanctions which included the default judgement.¹⁷ "Pine Hill asserted that it had served 'complete responses' to Nass' discovery requests a few weeks earlier."¹⁸ In support of their request for reconsideration, Pine Hill asserted that Nass would suffer minimal prejudice from a withdrawal of the default, that they had a meritorious defense, that they were unaware their counsel had withdrawn, and that their representative lacked English language proficiency and was unfamiliar with our legal system.¹⁹ The Court denied the motion to reconsider, and moved forward with the hearing on damages for the default judgement, with the participation of Pine Hill's counsel.²⁰

In reviewing the actions of the Circuit Court in Naas, the Court of Appeals of Virginia reviewed the language of Rule 4:12, emphasizing Rule 4:12(d), which was amended in 2018 to clarify when a court may impose the severe sanctions available.²¹ Rule 4:12(d)(3) states that if a party fails "to serve a written response to a request for production or inspections submitted under Rule 4:9, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among other it may – without prior entry of a Rule 4:12(b) order to compel

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*, 1-2.

¹⁹ *Id.*, 2. See also, *Id.*, pg. 4, fn. 4.

²⁰ *Id.*

²¹ *Id.*

regarding this failure – impose any of the sanctions listed in paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule.” The Court further found that the Circuit Court had not abused its discretion in imposing severe sanctions²² and noted that Virginia Courts have never required that a party requesting sanctions prove prejudice before it may impose a sanction.²³

RULING

The Court **FINDS** that Defendant Cyberlux has failed to produce any of the documents requested in Plaintiff AWH’s First Requests for Production served on August 29, 2022 with a valid return filed in this Court on September 19, 2022. Accordingly, the documents were due by October 17, 2022.²⁴ The Court further **FINDS** that Defendant Cyberlux has failed to comply with the Rule 4:12(a) Order Granting Plaintiff Atlantic Wave Holdings, LLC’s Motion to Compel requiring the production of “any and all documents responsive to the requests” by January 3, 2023.

The Court **NOTES** that the most severe sanctions may be imposed, in the discretion of the Court, for the failure to provide a written response to Requests for Production even without a Rule 4:12(a) Order having been entered. While Defendant Cyberlux did file a written response in that it objected in writing to the production of any privileged documents²⁵, to date Defendant Cyberlux has failed to provide a single document to Plaintiff AWH, even after the Rule 4:12(a) Order of December 13, 2022. The Court **FINDS** that the requested documents are over fifteen weeks overdue and that compliance with this Court’s Order to produce those documents is a month overdue.

²² *Id.*, pg. 4.

²³ *Id.*, 3.

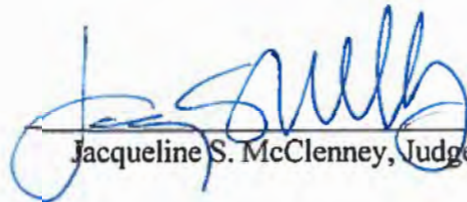
²⁴ Rule 4:9(b)(ii).

For the Forgoing reasons, the Court hereby **IMPOSES SANCTIONS** on Defendant Cyberlux and **ORDERS** that Defendant Cyberlux pay the attorney's fees and costs of Plaintiff AWH in the amount of \$6,842.50 by May 26, 2023. The Court further **ORDERS** that Defendant Cyberlux's Answer be struck and further **ENTERS DEFAULT JUDGEMENT** on behalf of Plaintiff AWH against Plaintiff Cyberlux. The Court **DIRECTS** Plaintiff AWH to follow the docketing procedures of the Court to set a hearing on damages and Notice Defendant Cyberlux of proceedings.

It is further **ORDERED** that the Clerk shall forward a certified copy of this order to both parties.

Endorsements are dispensed with by the Court pursuant to Rule 1:13.

ENTER: 3/20/2023


Jacqueline S. McClenney, Judge

²⁵ The Court **NOTES** that Defendant Cyberlux's written objection did not comply with the requirements of Rule 4:9(b)(ii).

EXHIBIT B

**SETTLEMENT AGREEMENT TO BE
FILED UNDER SEAL**

COMPLAINT

EXHIBIT C

COMPLAINT

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

**ATLANTIC WAVE HOLDINGS, LLC
AND SECURE COMMUNITY, LLC**

Plaintiffs,

v.

**CYBERLUX CORPORATION and
MARK D. SCHMIDT, individually**

Defendants.

Case No: CL22-3882 - 4

AMENDED FINAL ORDER AND JUDGEMENT

BEFORE THE COURT is a Motion for Entry of an Amended Final Order and Judgment by Plaintiffs ATLANTIC WAVE HOLDINGS, LLC AND SECURE COMMUNITY, LLC, and agreed to by Defendants CYBERLUX CORPORATION and MARK D. SCHMIDT, individually, and as the authorized representative for CYBERLUX CORPORATION, and

IT APPEARING to the Court that the parties hereto have reached a settlement agreement that resolves the current need for continuing litigation.

UPON CONSIDERATION of the pleadings, the evidence, argument of counsel, the consent of the parties, and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED that judgement is GRANTED in favor of Plaintiffs ATLANTIC WAVE HOLDINGS, LLC and SECURE COMMUNITY, LLC, and against Defendants CYBERLUX CORPORATION and MARK D. SCHMIDT, jointly and severally, as follows:

- a. The Court awards Plaintiffs the sum of **ONE MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$1,572,500)** in compensatory damages, jointly and severally, against Defendants CYBERLUX CORPORATION

and MARK D. SCHMIDT, to resolve the claims alleged in Plaintiffs' Complaint and certain other claims as agreed to by the parties pursuant to the parties' separate agreement.

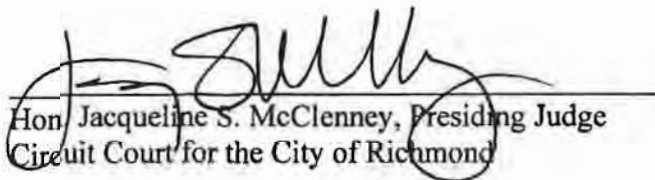
b. The parties agree that this Final Judgement shall not be dischargeable in bankruptcy to the fullest extent permissible at law, and Defendants hereby waive all rights of reconsideration or appeal. Nor shall it be subject to any contribution or reduced through the payment(s) of any other parties in this matter. Rather it shall be the sole obligation of Defendants.

c. That the Plaintiffs be awarded all of their costs, including reasonable attorney's fees of \$177,126.19 per the parties' settlement agreement, evidenced by affidavits, and consented to by defendants, plus sanctions of \$3,895.00 and \$6,842.50, as provided by the Court's previous Orders, and post judgment interest at the rate of 12% per annum, as provided in the parties' agreement, from the date of entry of this order on the damages incurred in this matter.

d. That the parties have agreed to a security interest and lien interest in all property of Defendants in favor of Plaintiffs until all sums are paid, and such security interest may be further memorialized through the filing of appropriate UCC-1 forms and the filing of appropriate Liens.

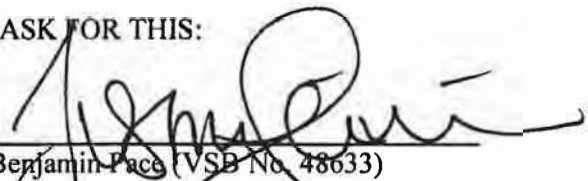
e. Plaintiffs' Complaint is hereby dismissed without prejudice. THIS CAUSE IS ENDED.

ENTERED this 22nd day of June, 2023.


Hon. Jacqueline S. McClenney, Presiding Judge
Circuit Court for the City of Richmond

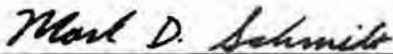
A Copy
Teste: EDWARD F. JEWETT, CLERK
BY:  D.C.

WE ASK FOR THIS:

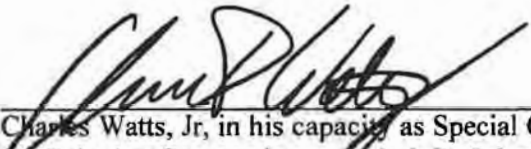


W. Benjamin Pace (VSB No. 48633)
Justin S. Feinman (VSB No. 83511)
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200 South 10th Street, 16th Floor
Richmond, Virginia 23219
804.420.6442
wpace@williamsmullen.com
jfeinman@williamsmullen.com
Counsel for Plaintiffs

SEEN and AGREED:



Mark D. Schmidt and Cyberlux Corporation
800 Park Offices Drive, Suite 3209
Research Triangle Park, NC 27709 By
Mark D. Schmidt, *Individually and as
President of Cyberlux Corporation*



Charles Watts, Jr, in his capacity as Special Counsel
for Cyberlux Corporation and Mark D. Schmidt

EXHIBIT D

COMPLAINT

B2192-3038 10/20/2023 6:59 AM Received by California Secretary of State



STATE OF CALIFORNIA
Office of the Secretary of State
UCC FINANCING STATEMENT (UCC 1)
California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only
-FILED-
File No.: U230074215520
Date Filed: 10/20/2023

Submitter Information:	
Contact Name	Eric M. Lemmer, Esq.
Organization Name	Arlington Law Group
Phone Number	(703) 842-3025
Email Address	elemmer@arlingtonlawgroup.com
Address	1739 CLARENDON BOULEVARD ARLINGTON, VA 22209

Debtor Information:	
Debtor Name	Mailing Address
Mark D. Schmidt	800 Park Offices Drive Suite 3209 Research Triangle Park, NC 27709
Cyberlux Corporation	800 Park Offices Drive Suite 3209 Research Triangle Park, NC 27709

Secured Party Information:	
Secured Party Name	Mailing Address
Atlantic Wave Holdings, LLC	11 S. 12th Street Richmond, VA 23219
Secure Community, LLC	11 S. 12th Street Richmond, VA 23219

Indicate how documentation of Collateral is provided:
Entered as Text

Description:
All of each Debtor's right, title and interest, whether now owned or hereafter acquired, in all of such Debtor's assets, including without limitation (i) any and all inventory (including without limitation relating to tactical military communications equipment, HF communication and software solutions equipment, Spectre H series HF transceivers, Spectre M series multi-band SDR transceivers and Spectre V series VHF transceivers, as well as all research and development for future technology), equipment, accounts, chattel paper, contractual rights, instruments, letter-of-credit rights, letters of credit, documents, deposit accounts, money, intellectual property (including without limitation relating to tactical military communications equipment, HF communication and software solutions equipment, Spectre H series HF transceivers, Spectre M series multi-band SDR transceivers and Spectre V series VHF transceivers, as well as all research and development for future technology), general intangibles, accounts receivable and other rights to payment and performance, (ii) any and all furniture, fixtures, attachments, accessions, accessories, fittings, tools, parts, supplies and commingled goods relating to any of the foregoing property, (iii) any and all additions, replacements of and substitutions for all or any part of any of the foregoing property, (iv) any and all insurance proceeds relating to any of the foregoing property, (v) any and all goodwill relating to any of the foregoing property, and (vi) in the case of Debtor Cyberlux Corporation, all subsidiaries of such Debtor, including without limitation Datron World Communications, Inc.

Indicate if Collateral is held in a Trust or is being administered by a Decedent's Personal Representative:
Not Applicable

Select an alternate Financing Statement type:
Not Applicable

Select an additional alternate Financing Statement type:
Not Applicable

Select an alternative Debtor/Secured Party designation for this Financing Statement: Not Applicable
Optional Filer Reference Information:
Miscellaneous Information:
Search to Reflect: ☐ Order a Search to Reflect

EXHIBIT E



Secretary of State

Business Programs Division
1500 11th Street, Sacramento, CA 95814

ARLINGTON LAW GROUP
ERIC M. LEMMER, ESQ.
1739 CLARENDON BOULEVARD
ARLINGTON, VA 22209

October 20, 2023 7:02 AM

File No.: U230074215520

Lien Acknowledgment

This acknowledges the filing of the attached Lien document relevant to the information below. To access free copies of filed UCC documents, enter the File No. above in the Search module on the UCC Online web portal at bizfileonline.sos.ca.gov/search/ucc.

DEBTOR INFORMATION

Debtor Name:	MARK D. SCHMIDT
Debtor Address:	800 PARK OFFICES DRIVE SUITE 3209 RESEARCH TRIANGLE PARK, NC 27709
Debtor Name:	CYBERLUX CORPORATION
Debtor Address:	800 PARK OFFICES DRIVE SUITE 3209 RESEARCH TRIANGLE PARK, NC 27709

SECURED PARTY INFORMATION

Secured Party Name:	ATLANTIC WAVE HOLDINGS, LLC
Secured Party Address:	11 S. 12TH STREET RICHMOND, VA 23219
Secured Party Name:	SECURE COMMUNITY, LLC
Secured Party Address:	11 S. 12TH STREET RICHMOND, VA 23219

FILING INFORMATION

Lien Type:	UCC
Lien File No.:	U230074215520
File Date:	10/20/2023 6:58 AM
Lapse Date:	10/20/2028 11:59 PM